

**CITY OF FREDERICK
ZONING BOARD OF APPEALS
MEETING MINUTES
August 24, 2010**

MEMBERS PRESENT:	STAFF PRESENT:
Mr. Racheff Ms. Colby Mr. Hazlett Mr. Marvin Kennedy Mr. Dario Cavazos Mr. Philip Dacey	Mrs. Gabrielle Dunn, Division Manager of Current Planning Mrs. Lea Ortiz, Office Manager Mrs. Rachel Depo, Assistant City Attorney Mr. Jeff Love, City Planner

ANNOUNCEMENTS

For the benefit of the audience and especially the applicants, Mr. Racheff, Chairman, introduced everyone by name and department and explained the Zoning Board of Appeals process.

APPROVAL OF MINUTES:

July 27, 2010 minutes.

MOTION: Ms. Colby moved to approve the July 27, 2010 hearing minutes as published.

SECOND: Mr. Cavazos

VOTE: 5-0.

GENERAL PUBLIC COMMENT

There was no general public comment.

CASES TO BE HEARD

CASE NO.: ZBA10-283CU
LOCATION: 98 Blueridge Court
APPLICANT: Clovis Ngouambe

STAFF RECOMMENDATION

Mrs. Dunn noted that staff is requesting a continuance to the September 28, 2010 hearing on the basis that the applicant once again did not meet the required public notice provisions. Staff offered the applicant the opportunity to continue or withdraw the application and also requested a formal letter for the time of the continuance, but has not received the request from the applicant. Staff

stated that they also contacted the applicant that day to see if they want to be granted the continuance to the September 28, 2010 hearing, but the applicant has not replied to staff. It is the decision of the Board whether to grant another continuance to allow staff to further contact the applicant to attempt another hearing.

Ms. Colby asked if the applicant had picked up a new sign for this hearing. Staff said they did pick up the new sign, but an email was received from a resident who had seen the case posted previously on the site and was questioning the posted requirements. Staff went to the site and found that the sign was on the property, but not posted in a visible manner, it was folded up and leaning up against the house.

Mr. Hazlett asked staff that they had requested a letter which the applicant did not do. Staff said that is correct.

Ms. Colby indicated she would give the applicant the benefit of the doubt and that the Board had given a second continuance in the past.

Ms. Depo stated that in accordance with the Boards Rules of Procedure, the Board should grant a continuance in the event that the applicant fails to appear at the hearing and therefore, would recommend that the Board grant one more continuance.

Mr. Hazlett felt that the applicant should be more cooperative with staff.

MOTION: Ms. Colby moved to continue ZBA10-248CU, 98 Blueridge Court to the September 28, 2010 public hearing.

SECONDED: Mr. Dacey

VOTE: 4-0. Mr. Cavazos was against the motion, Mr. Racheff was for the motion.

CASE NO.: ZBA10-283CU

LOCATION: 108 Leather Fern Way

APPLICANT: Wayne Harris

DESCRIPTION:

The Applicant seeks approval for a conditional use home occupation to operate an internet and trade show firearm part sales business, in accordance with §829 of the Land Management Code.

BACKGROUND INFORMATION:

The subject property is a townhouse unit within the Tasker's Chance subdivision, located on the south side of Key Parkway. The subdivision plat which created the subject lot was recorded in January 2007. The property is currently zoned R8 (Medium Density Residential).

While not part of the review of the ZBA in considering the approval of a home occupation, Staff felt it important to address the nature of the Applicant's proposed business of internet and trade show firearm part sales. The ZBA is charged with finding a conditional use home occupation compliant with the requirements of §829, which does not consider the type of business proposed, but rather establishes

parameters under which a home occupation is permitted. It will be the responsibility of the Applicant to seek out the information regarding the legality and the proper licensing necessary for the operation of the business. Planning Staff has informed the Frederick Police Department of the Applicant's application and has directed the Applicant to seek any other approvals necessary for the operation of the home occupation.

STAFF RECOMMENDATIONS:

Staff recommended approval of ZBA10-283BZHO, a conditional use home occupation at 108 Leather Fern Way, finding that:

1. Home occupations that comply with Section 829 of the LMC support the Economic Development, Transportation, and Housing elements of the 2010 Comprehensive Plan and that;
2. The inclusion of the home occupation will not create impacts to the community that are greater than those which are normally associated with a residential dwelling unit and that;
3. The proposed home occupation will not create a nuisance due to increased noise, traffic, or other activity associated with the business and that;
4. The home occupation will be secondary to the residential use of the property and that;
5. No signage or storage of materials will occur on the site which result in external evidence that the home is being used for a business; and that
6. There will be no additional vehicular traffic to the site excluding the trips generated by the permitted one (1) daily delivery by UPS, FedEx or other similar services.
7. The proposed home occupation is in harmony with the intent of the Comprehensive Plan and Land Management Code,
8. The proposed home occupation will not have an adverse impact on the neighborhood, and
9. The applicant has satisfied all conditions of Land Management Code Article 829.

With the conditions that:

1. The Applicant applies for and is issued a zoning certificate for the home occupation to reflect the conditional use approval.
2. If there are any documented violations of these conditions, the home occupation will be automatically revoked.

APPLICANT PRESENTATION:

Mr. Wayne Harris of 108 Leather Fern Way, concurred with the staff report.

DISCUSSION:

Mr. Dacey asked the applicant if the firearms would be delivered to the applicant's home.

The Applicant clarified for the Board that he deals in firearm parts only and not completed firearms. He went on to say that the reason why he had to apply for this conditional use is because in order to become a registered manufacturer the ATF requires him to have zoning approval. The Applicant mentioned that he represents out-of-state companies that don't want to open a business in state so he has become their wholesaler where he would then sell to different stores in the area. If a shipment comes to him, or if a new product comes in, they want him to show the potential buyer the product and the buyer places the order through him and is shipped to the buyer.

Mr. Dacey noted that the applicant is going to sell the parts to the wholesalers. The Applicant reiterated that he will be selling everything, but he mainly deals with parts and he does not sell completed firearms.

There was discussion as to whether or not packages would be left at the residence if Mr. Harris was not home to accept the delivery. Mr. Harris explained that packages would not be left unattended. He said that he works with UPS and he has to pick up packages at the hub because he has to show full documentation along with his driver's license in order for him to receive the packages. He explained that most businesses cannot afford having offices in multiple areas so they have individuals in particular zones as the main distributors. The Applicant also mentioned that he has a drop box and anything that does not fit in the box he has to pick up at the delivery hub.

Mr. Racheff asked if customer would be coming to the residence.

The Applicant responded that no customers would be coming to the residence.

Ms. Colby asked what "Anthony Raquinio Enterprises, LLC" was.

The Applicant explained that it is his middle name and his wife's last name and is an LLC already established for his wife's real estate business and that is the LLC name that he will continue to use.

Mr. Cavazos asked the applicant if he expects to grow.

The Applicant stated that he did intend to grow, but would likely have to get another space if the business grew much longer.

Mr. Kennedy was concerned about having ammunition delivered to the resident.

The Applicant said anyone could ship ammunition anywhere, but he does not deal with that aspect because it involves a hazard fee.

PUBLIC COMMENT:

There was no public comment.

DISCUSSION FROM THE BOARD:

MOTION: Ms. Colby moved to approve ZBA10-283BZHO for a home occupation to operate an internet and tradeshow firearm parts sale business, in accordance with Section 829 of the Land Management Code at the location of 108 Leather Fern Way finding that:

1. Home occupations that comply with Section 829 of the LMC support the Economic Development, Transportation, and Housing elements of the 2010 Comprehensive Plan and that;
2. The inclusion of the home occupation will not create impacts to the community that are greater than those which are normally associated with a residential dwelling unit and that;
3. The proposed home occupation will not create a nuisance due to increased noise, traffic, or other activity associated with the business and that;
4. The home occupation will be secondary to the residential use of the property and that;
5. No signage or storage of materials will occur on the site which result in external evidence that the home is being used for a business; and that
6. There will be no additional vehicular traffic to the site excluding the trips generated by the permitted one (1) daily delivery by UPS, FedEx or other similar services.
7. The proposed home occupation is in harmony with the intent of the Comprehensive Plan and Land Management Code,

8. The proposed home occupation will not have an adverse impact on the neighborhood, and
9. The applicant has satisfied all conditions of Land Management Code Article 829.

With the conditions that:

1. The Applicant applies for and is issued a zoning certificate for the home occupation to reflect the conditional use approval.
2. If there are any documented violations of these conditions, the home occupation will be automatically revoked.

SECOND: Mr. Cavazos
VOTE: 4-0

The meeting adjourned at 7:35 p.m.

Respectfully submitted,

Lea M. Ortiz